

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON S. BEACHMAN,

Defendant-Appellant.

UNPUBLISHED

April 25, 2000

No. 210018

Wayne Circuit Court

LC No. 97-502316

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Damon S. Beachman of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced Beachman as a second habitual offender, MCL 769.10; MSA 28.1082, to 5 to 22½ years in prison. Beachman now appeals as of right. We affirm.

I. Basic Facts And Procedural History

This case arises out of a purse-snatching incident in a grocery store parking lot. After a man hit the victim over the head and stole her purse, bystander Daniel Thompson went to her aid. Thompson and the perpetrator struggled but the perpetrator was able to flee. Thompson and two other witnesses, Joe Spadafore and Kristine Wieczorek, got into two cars and followed the perpetrator as he drove out of the parking lot. Thompson, who was able to see and memorize the perpetrator's license plate number, followed the perpetrator to a house. After Thompson saw the perpetrator run inside, he wrote down the house's address.

The witnesses all returned to the scene of the robbery, where they described the perpetrator, his car, and his whereabouts to the police. The police officers at the scene of the crime radioed the information they obtained from the witnesses to other officers. The officers at the scene later received word that police were questioning three suspects regarding the crime about a mile away. Two of the three suspects reportedly matched the description of the perpetrator the witnesses gave to police, but the officers with the suspects were not certain which person they should arrest. Police officers then drove Thompson and Spadafore to the site at which the other officers were questioning the suspects.

After Spadafore identified the perpetrator's car and Thompson identified Beachman as the perpetrator, the police arrested Beachman.

At a pretrial evidentiary hearing, Beachman argued that the identification procedure the police used was improper because the suspects were not free to leave, making the identification procedure akin to a corporeal lineup at a police station, and counsel should have been present. The prosecutor argued that it was not a corporeal lineup requiring counsel to be present because the officers needed to determine which suspect to arrest. The prosecutor also called three police officers to testify to the circumstances surrounding the identification. Contrary to Beachman's claim, none of the officers testified that the officers ushered the suspects out of a police car so that the witnesses could see them. Beachman presented no witnesses and the trial court concluded that the procedure was a proper on-the-scene identification and not unduly suggestive.

At trial, Thompson identified Beachman in court as the man who attacked the complainant and took her purse. After describing the way he chased Beachman from the parking lot, Thompson recounted how the police took him to see the suspects in the robbery. According to Thompson, a crowd had begun to form around the police officers and the suspects, who were in a police car. The officers took each suspect out of the police car and Thompson said that he paid attention to each man's face and clothing; Thompson did not notice if any of the suspects were wearing handcuffs. He immediately knew that the first suspect he saw was not the perpetrator but when he saw Beachman get out of the police car, Thompson identified him as the perpetrator. Next, Officer Obrec testified that Beachman and the other suspects were standing on a sidewalk when Thompson actually identified him. Only after Thompson and Officer Obrec both testified did Beachman object and renew his motion to suppress Thompson's identification on the day of the crime. Consistent with its earlier ruling that the identification was admissible, the trial court denied Beachman's motion.

II. Identification

A. Preservation Of The Issue And Standard Of Review

Beachman first contends that the trial court erred in denying the motion he made *at trial* to "suppress" Thompson and Officer Obrec's testimony that Thompson identified Beachman on the day of the crime because that identification process was too suggestive.¹ However, in effect, he argues that the trial court erred when it originally refused to suppress the identification testimony following the evidentiary hearing and that the trial court perpetuated its error by failing to reconsider its ruling at trial. Beachman preserved this issue for appeal by moving to suppress the testimony. See *People v Larry*, 162 Mich App 142, 155; 412 NW2d 674 (1987).

We review a trial court's decision with respect to a motion to suppress evidence for clear error. See generally *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

B. Due Process, Identification, And The Trial Court's Ruling

Under our relatively recent opinion in *People v Winters*, 225 Mich 718, 723-728; 571 NW2d 764 (1997), the police may conduct prompt “on-the-scene identification” of suspects without the presence of counsel. The identification process may not, however, be so unduly suggestive under the totality of the circumstances that it led to a “substantial likelihood of misidentification.” *People v Kurylczyk*, 443 Mich 289, 303, 318; 505 NW2d 528 (1993). If the identification procedure is too suggestive, it violates due process and testimony regarding the identification is inadmissible at trial. *Id.* at 303.

When examining the totality of the circumstances, relevant factors include: the opportunity for the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of a prior description, the witness’ level of certainty at the pretrial identification procedure, and the length of time between the crime and the confrontation. [*People v Colon*, 233 Mich App 295, 304-305; 591 NW2d 692 (1998), citing *Kurylczyk*, *supra* at 306.]

The trial court in this case refused to grant Beachman’s motion to suppress the identification testimony for a number of reasons endorsed in *Colon* and *Kurylczyk*. For instance, the trial court noted that little time passed between the crime and identification, according to the police testimony on the record at the suppression hearing Beachman was not put into a police car, isolated for observation, nor did the police handcuff him before Thompson identified him. In sum, the trial court said, it could not “glean anything from the testimony . . . that would indicate that any of the portions of the process were suggestive.”

We have no reason to disagree with the trial court’s assessment of the evidence, much less an indication that the trial court clearly erred. Even if, as Beachman asserts, the clothing Beachman was wearing contributed to Thompson’s identification, Beachman does not explain how that clothing was at all suggestive. The police did not, for example, dress Beachman in clothing hinting that he was guilty, such as a prison uniform. See *Colon*, *supra* at 305. Nor did the police indicate to Thompson which man they suspected of committing the offense, or that they were certain either man had committed the offense; Thompson independently ruled out the first suspect and identified Beachman as the perpetrator. See *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). Nor did the police ask Thompson to identify the purse snatcher out of a group of people in which Beachman was the only person to match the description of the perpetrator to any degree. See *People v James*, 184 Mich App 457, 465-466; 458 NW2d 911 (1990), vacated on other grounds 437 Mich 988 (1991). Moreover, the identification occurred relatively soon after the offense, after Thompson had more than one opportunity to look at the perpetrator, and Thompson had not doubt that he identified the correct person. *Kurylczyk*, *supra* at 306.

Although Beachman demonstrates that Thompson’s testimony at trial contradicted the police officers’ suppression hearing testimony regarding whether the suspects were in a police car when he identified Beachman, this inconsistency created a question of credibility for the jury to resolve. *People v Crump*, 216 Mich App 210, 215-216; 549 NW2d 36 (1996). The other challenges Beachman makes to the identification, such as whether other trial witnesses impeached Thompson’s credibility on the identification issue, were equally appropriate for the jury to resolve. See generally *People v*

McElhaney, 215 Mich App 269, 287; 545 NW2d 18 (1996) (even an initially “tentative” but ultimately “unequivocal” identification may be submitted to the jury, which may consider the credibility of the witness). Overall, Beachman has not sustained his burden of proving that the identification procedure was so suggestive that it undermined its constitutional validity. See *id.*, citing *People v Benson*, 180 Mich App 433, 438; 447 NW2d 755 (1989) rev'd in part on other grounds 434 Mich 903 (1990). Thus, we have no basis to conclude that the trial court erred when initially denying the motion to suppress or later, at trial, when it denied the renewed motion to suppress.

III. Directed Verdict

A. Standard Of Review

Beachman contends that, because of the allegedly tainted identification procedure, the trial court erred in denying his motion for directed verdict. This Court reviews a trial court’s decision to deny a motion for a directed verdict of acquittal de novo. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995).

B. Analysis

When we review a trial court’s decision denying a motion for a directed verdict, we consider the evidence the prosecutor presented “up to the time” the defendant moved for a directed verdict. *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998). We view this evidence “in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt.” *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

Beachman does not contend that the prosecutor failed to introduce evidence that there was “(1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed,” which are the elements of unarmed robbery. MCL 750.530; MSA 28.798; *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Rather, he contends that the prosecutor failed to prove that he was the person who committed the unarmed robbery. Beachman is correct in pointing out that the prosecutor always has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the offense alleged. See *People v Fields*, 450 Mich 94, 116 & n 26; 538 NW2d 356 (1995); see also CJI2d 7.8. However, his argument that the trial court should have granted the motion for a directed verdict solely and explicitly relies on his argument that Thompson’s identification was tainted. Because we disagree with that contention, we must conclude that the trial court properly denied the motion for a directed verdict.

In addition to the factors that we identified that indicate, pursuant to *Kurylczyk*, *supra* at 306, that Thompson’s on-the-scene identification was proper, we also note that, at trial, the prosecution introduced evidence from which the jury could rationally infer that Thompson correctly identified Beachman as the perpetrator. For instance, Thompson wrote down Beachman’s license plate number and he was able to describe his car to the jury. Similarly, Spadafore identified Beachman’s car as the car the perpetrator drove away from the parking lot. Even if Spadafore or Thompson lost sight of

Beachman at some point during the chase, Officer Obrec confirmed that Beachman matched the descriptions the witnesses gave to the police even before the on-the-scene identification. Thompson and Spadafore even led the police to the address at which Beachman was ultimately arrested. When viewed in the light most favorable to the prosecutor, the evidence submitted to the jury was sufficient to establish that Beachman was the person who committed every element of the offense. Therefore, the trial court properly denied the motion for a directed verdict of acquittal and permitted the jury to render a verdict.

IV. Sufficiency Of The Evidence

A. Legal Test

Beachman contends that the evidence the prosecutor presented to the jury was insufficient to support his conviction because the prosecutor failed to prove that he was the person who committed the unarmed robbery, he had a credible alibi defense, and none of the witnesses at trial corroborated Thompson's identification. We apply the same analysis to determine whether there was sufficient evidence of guilt to support a guilty verdict that we apply when determining whether a trial court erred in denying a motion for directed verdict. *People v Toodle*, 155 Mich App 539, 551; 400 NW2d 670 (1986).

B. Analysis

Beachman's arguments under this issue are largely a repetition of the other arguments he has advanced in this appeal, which we have already resolved against him. The only different aspect to this issue is that Beachman vaguely suggests that his alibi evidence was so strong that the other, in his opinion, incredible evidence at trial was insufficient to prove his guilty beyond a reasonable doubt.

Specifically, to counter the evidence prosecutor presented at trial, Beachman called Phillip and Stephani McIntosh to testify. According to Stephani McIntosh, Beachman spent the night of July 5, 1997, at her house in Detroit and remained there until the next morning, when Beachman left the house with her son in the late morning. The next time she recalled seeing Beachman was about thirty minutes later, at 11:30 a.m. or noon, when she went to the address at which the police ultimately arrested Beachman.

Phillip McIntosh, Stephani McIntosh's son and the second suspect in the purse snatching who Thompson ruled out as the perpetrator, also testified that Beachman spent the night at his house and stayed there until the morning of July 6, 1997. Phillip McIntosh claimed that when he and Beachman woke up they drove his car to a nearby store before going to his cousin's home; he denied lending his car to Beachman at all that day and recalled that the police confronted them just ten minutes after they arrived at his cousin's house. Aside from his testimony regarding Beachman's alibi, Phillip McIntosh confirmed that his car had the same license plate number as the one Thompson memorized from the car at the grocery store parking lot.

Stephani and Phillip McIntosh's testimony certainly created a dispute with regard to the true facts of the case. However, as we discussed at length above, the jury's role is, precisely, to sort out these questions of fact by weighing credibility on the basis of firsthand observations of the witnesses while they were testifying. We cannot say that Stephani and Phillip McIntosh's testimony was so indisputable that the jury looking at all the evidence introduced at trial could not, as a matter of law, find Beachman's guilt beyond a reasonable doubt. See *Lemmon, supra* at 642-644.

Affirmed.

/s/ Harold Hood

/s/ Hilda R. Gage

/s/ William C. Whitbeck

¹ We have read the transcripts and Beachman's brief carefully and do not find any indication that Beachman argued at trial or argues now that Thompson or Officer Obrec's *in-court identification* of Beachman was improper or, if so, it lacked an independent basis. See *People v Kachar*, 400 Mich 78, 95-97; 252 NW2d 807 (1977) (if the prosecutor can establish with clear and convincing evidence that a witness has an independent basis for identifying the defendant as the perpetrator of the crime at trial, then the independent basis can purge the taint of the initial identification).